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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,467

09/10/2004

Jan Van Der Linden

0218.71425

1251

24978

7590

06/16/2006

GREER, BURNS & CRAIN  
300 S WACKER DR  
25TH FLOOR  
CHICAGO, IL 60606

EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/507,467

Applicant(s)

VAN DER LINDEN ET AL.

Examiner

Theodore J. Stigell

Art Unit

3763

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/14/2005</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Knab et al. (3,923,482). Knab discloses a device for the supply of a gas to an area comprising a supply conduit (15) which is connectable to a gas source (12) and which includes an outlet end, and a porous body (31) which is provided at said outlet end, wherein the device is arranged to permit the supply of gas through the porous body, the device includes an attachment member (14), which includes a surface (inside surface of 14) and a channel (the lumen of 14) extending through the surface, wherein the porous body is attached to the surface and wherein the outlet end is connected to the attachment member for permitting said supply via the channel, wherein the surface of the attachment member covers substantially the whole porous body seen in the first direction extending from the attachment member through the body, wherein the attachment member includes a sleeve (25) which extends outwardly away from the porous body and which is connected to the outlet end, wherein the channel extends through the sleeve, wherein the sleeve forms an angle between 0 and 90, the sleeve projects into the supply conduit, and the attachment member and porous body are

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substantially circular seen in the first direction (Figure 3) and the porous body has a semispherical surface and is made of homogenous filter material.

Claims 1-7, 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bagby (690,224). Bagby discloses a device for the supply of a gas to an inner portion of the human body comprising a supply conduit (4,5) which is connectable to a gas source (1,2,3) and which includes an outlet end, and a porous body (6) which is provided at said outlet end, wherein the device is arranged to permit the supply of gas through the porous body, the device includes an attachment member (11), which includes a surface (proximal surface of 11) and a channel (10) extending through the surface, wherein the porous body is attached to the surface and wherein the outlet end is connected to the attachment member for permitting said supply via the channel, wherein the surface of the attachment member covers substantially the whole porous body seen in the first direction extending from the attachment member through the body, wherein the attachment member includes a sleeve (distal section of 11) which extends outwardly away from the porous body and which is connected to the outlet end, wherein the channel extends through the sleeve, wherein the sleeve forms an angle between 0 and 90, the sleeve projects into the supply conduit, and the attachment member and porous body are substantially circular seen in the first direction and the porous body has a semispherical surface and is made of homogenous filter material.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knab et al. (3,923,482) or Bagby (690,224) in view of Heimlich (3,672,372). Knab and Bagby disclose all of the limitations as recited in claim 1, but do not teach to include a stiffening means in the form of a deformable wire in the conduit. Heimlich discloses a

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catheter that includes tubing (10) with a wire stiffening means (36) disposed within the conduit. Heimlich teaches that the stiffening means is useful in avoiding kinking in the flexible catheter that would inhibit the flow of fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supply conduits of Knab and Bagby with the limitations of Heimlich to make a supply conduit that was more resilient and less likely to kink while delivering gas to the body.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knab et al. (3,923,482) or Bagby (690,224) in view of van der Linden (6,994,685). Knab and Bagby disclose all of the limitations as recited in claim 1, but do not teach to make the porous body from a foam rubber like material with open cells. Van der Linden discloses a device for delivering gas to an area inside the body that includes a porous body made from a foam rubber like material with open cells. Van der Linden teaches that this configuration is useful in controlling the flow of gas into the body. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the porous bodies of Knab and Bagby with the limitations of van der Linden to make a gas delivery device that could more easily create a gaseous environment within the body.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Theodore J. Stigell

  
NICHOLAS D. LUCCHESI  
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